



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,604	10/24/2003	Changyong Lee	25772	7311

7590 05/15/2006

NATH & ASSOCIATES PLLC
Sixth Floor
1030 15th Street, N.W.
Washington, DC 20005

EXAMINER

MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/691,604	Applicant(s) LEE ET AL.	
	Examiner Kelly Mahafkey	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "long-term" in claim 1 is a relative term that renders the claim indefinite. The term "long-term" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear to examiner the extent of time to which "long-term" is associated with; it is unclear if long term implies a matter of hours, a matter of days, a matter of months, or a matter of years.

The term "having capability" in claim 1 is a relative term which renders the claim indefinite. The term "having capability" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear as to the limitations that "having capability" encompasses; it is unclear if the invention is capable as recited in the present limitations or if the invention would need limitations and/or manipulations in order to be capable.

Art Unit: 1761

The phrase "cooking rice with steam..." is unclear in claim 1(d) because in claim 1(b) "the rice" is mixed with ginseng, jujube, and chestnut; it is unclear as to if the rice is separated from the mixture and then cooked alone, or if the entire rice mixture (as described in step b) is cooked, or if a rice, separate from the rice utilized in step b, is cooked.

Claim 3 recites the limitation "pretreatment of step (a)" in claim 1. There is insufficient antecedent basis for this limitation in the claim; there is no pretreatment step specified in claim 1.

Claim 3 is rejected because it depends upon claim 1 and recites, "blenching ginseng... and soaking jujube and chestnut..." and Claim 1 recites, "blenching and soaking ginseng, jujube, and chestnut..." It is unclear to the examiner if the ginseng, jujube, and chestnut are all blenched and soaked as recited in claim 1, or if only the ginseng is blenched and only the jujube and chestnut are soaked. Clarification is needed.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. Claim 4 recites a sterilization process, which occurs 4-10 times repeatedly for 4-8 seconds. Since the sterilization occurs repeatedly, it is unclear to the examiner what the sterilization process entails. It is unclear if the sterilization process is equivalent to a one-time sterilization process, which occurs for 16 to 80 seconds, or if there is a step missing which breaks the sterilization process into 4-10 distinct cycles.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Try (Try Korean Dishes: Kalbit'ang-Rib Soup 9/17/2000) in view of the combination of George et al. (US 6042863), Katsuragi et al. (US 5756543), Komatsu et al. (US 3892058), and McIntyre et al. (US 4741911).

Try teaches that chicken soup with ginseng, rice, jujube, and chestnut is a common Korean dish that is frequently enjoyed in warm weather in order to assist consumers in dealing with sweltering heat. Try however is silent in teaching the method by which the cooked rice composition is made; Try is silent in teaches blenching the ginseng, jujube, and chestnut as recited in claims 1(a and b) and 3, as soaking the ginseng, jujube, and chestnut in a calcium and organic acid solution as recited in claims 1(a and b) and 3, as sterilizing the mixture at high temperature and high pressure after

Art Unit: 1761

filling in a heat-resistant plastic container as recited in claims 1(c) and 4, as cooking the rice by steaming for 30 minutes at 100C in a fixed amount of GDL (glucono delta lactone) as recited in claims 1(d), 4, and 5, and as aseptically sealing the packaging for long-term preservation as recited in claim 1(e).

Regarding the blanching the ginseng, jujube, and chestnut as recited in claims 1(a and b) and 3, George et al. (George) teaches that blanching of nuts can be preformed by soaking in alkaline solutions about 60C (i.e. 50C) for up to 20 minutes (Column 3 lines 42-55) and by subsequently soaking in acids (Column 2 lines 16-26). George teaches that blanching is desirable for several reasons, such as removing unpleasant or bitter taste and preventing discoloration of final products (Column 1 lines 34-51). It would have been obvious to one of ordinary skill in the art at the time the invention was made to blench the ginseng, jujube, and chestnut as recited in claims 1(a and b) and 3. One would have been motivated to do so in order to gain the benefits of blenching the ginseng, jujube, and chestnut, such as the removal unpleasant or bitter taste and prevention of discoloration of the final food products. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to use any conventional means of blanching depending on the desired attributes in the final product and the economic availability of the materials required for that method of blanching. Because Try teaches of a popular dish which includes chestnuts and George teaches of a method of improving nuts, one would have a reasonable expectation of success from the combination. It would have been further obvious to one

Art Unit: 1761

of ordinary skill in the art to slice the ginseng before processing depending on the desired taste.

Regarding the soaking the ginseng, jujube, and chestnut in a calcium and organic acid solution as recited in claims 1(a and b) and 3, Katsuragi et al. (Katsuragi) teaches of the addition of an organic acid and calcium solution to nuts, jujube and plant extracts in order to combat bitterness (Abstract, column 1 lines 46-50, Column 2 lines 1-11 and 49-54, Column 3 lines 57-65, and Column 5 lines 11-12 and 38-50.) Katsuragi teaches that the bitterness intensity changes in relation to the percentage of organic acid and calcium solution added (Table 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to soak the ginseng, jujube, and chestnut in a calcium and organic acid solution in view of Katsuragi. One would have been motivated to do so in order to gain the benefits of soaking the ginseng, jujube, and chestnut in a calcium and organic acid solution, such as reduced bitterness. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to include soaking in a specific percentage of the solution at a specific time and temperature depending on the specific type of nuts, ginseng, and jujube utilized and the desired bitterness in the final product. Because Try teaches of a popular dish which includes jujube, nuts, and plant extracts and Katsuragi teaches of a method of improving jujube, nuts, and plant extracts, one would have a reasonable expectation of success from the combination.

Regarding the sterilizing the rice mixture at high temperature and high pressure after filling in a heat-resistant plastic container as recited in claims 1(c) and 4 and

Art Unit: 1761

ascetically sealing the packaging for long-term preservation as recited in claim 1(e) Komatsu et al. (Komatsu) teaches of a process and plastic (i.e. flexible as defined by The American Heritage Dictionary) packaging for high temperature and high pressure short time sterilization (Abstract). Komatsu teaches that the process is to include a temperature of 130-160C, high pressure, and a time of 0.5-15 minutes. Komatsu teaches of aseptically and hermetically sealing and packaging the final product (Column 10 lines 42-67, Column 11, Column 12 lines 1-22, and Column 15 lines 34-60). Komatsu teaches that the process and packaging are to be utilized for food articles that are intended to be highly preservable and that enzymatically brown and lose natural colors, flavor, and texture upon conventional heat sterilization processes (Columns 17 and 18 *Utility*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include sterilizing the rice mixture at high temperature and high pressure after filling in a heat-resistant plastic container as recited in claims 1(c) and 4 and aseptically sealing the packaging for long-term preservation as recited in claim 1(e). One would have been motivated to do so in order to gain the benefits of high temperature and high pressure sterilization after filling in a heat-resistant plastic container, such as color and flavor preservation as taught by Komatsu (Column 10 lines 42-67, Column 11, and Column 15 lines 34-60). One would have been motivated to do so in order to gain the benefits of aseptic processing, such as an uncontaminated product. Because Try teaches of a food product that is traditionally sterilized and because Komatsu teaches of the process of improving food products through sterilization, one would have a reasonable expectation of success from the combination.

Regarding the cooking the rice by steaming for 30 minutes at 100C in a fixed amount of GDL as recited in claims 1(d), 4, and 5 McIntyre et al. (McIntyre) discloses that GDL is added to vegetable and grain products increase the lethality of heat to microorganisms, preserve flavor, and preserve product color and texture during thermal processing (Abstract, Column 3 lines 23-37, Column 4 lines 47-54, Column 5 lines 15-40, Column 6 lines 1-16, and Column 7 lines 46 and 64-68). McIntyre teaches that heating the food with the GDL accelerates the reaction and is the preferred method (Column 8 lines 1-17). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include GDL in the rice composition. One would have been motivated to do so in order to gain the benefits of GDL, such as increasing the lethality of heat to microorganisms, preserving product flavor, color and texture during thermal processing. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to include GDL when cooking the rice because McIntyre teaches that the addition of GDL before heat treatment is preferred. Furthermore, it was notoriously well known in the art at the time the invention was made to cook rice via the process of steaming and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any conventional cooking means for any conventional time depending on the desired texture (i.e. hardness and stickiness) of the final product. Because Try teaches of a food product and McIntyre teaches of the additional aids in sterilizing food products one would have a reasonable expectation of success from the combination.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

Asia Food Features (<http://www.asiafood.org/samg.cfm>) discloses of a recipe for Samgyetang (ginseng chicken soup with chestnuts and jujube).

Trend (http://english.kbs.co.kr/life/trend/1358077_11857.html) discloses that Samgyetang (ginseng chicken soup with chestnuts and jujube) is a traditional Korean meal that provides several health benefits

KR2001018178A discloses of a method for producing processed food made from ginseng, including the step of soaking the ginseng in a solution with acids.

CN1038745A discloses of preserving ginseng by soaking it in acid.

CN1096171A discloses of blanching ginseng.

CN1066787A discloses of preserving ginseng by soaking it in acid.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



4/27/02

Kelly Mahafkey
Examiner
Art Unit 1761



KEITH HENDRICKS
PRIMARY EXAMINER